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11 SHOP-VAC CORPORATION

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 RICHARD A. SILBER, an individual and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 SHOP-VAC CORPORATION, a
19 Pennsylvania Corporation, and DOES 1
20 through 100, inclusive

21 Defendants.

CASE NO. 3:08CV00637-JLS (RBB)

22 **NOTICE OF MOTION AND MOTION FOR**
23 **ORDER DISMISSING PLAINTIFF'S**
24 **COMPLAINT (FRCP 12(B)(6))**

25 DATE: July 18, 2008

26 TIME: 10:30 AM

27 COURTROOM: 6

28 Hon. Janis L. Sammartino

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON Friday, July 18, 2008, or as soon thereafter as the matter may be heard in Courtroom 6 of the above-entitled Court, located at 940 Front Street, San Diego, California, Defendant SHOP-VAC CORPORATION will move the Court pursuant to Rule 12(b)(6), Fed. R. Civ. Pro. for an order Dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted. Specifically, Plaintiff fails to plead sufficient facts to confer standing pursuant to the Consumer Legal Remedies Act (Cal.Civil Code § 1750, et seq.),

California's Unfair Competition Law (Cal. Business & Professions Code § 17200, et seq., and California Business & Professions Code § 17533.7. Further, Plaintiff failed to plead facts sufficient to confer standing to bring the action as a class representative, i.e., he has not stated facts that demonstrate that an ascertainable class exists with a well-defined community of interest among the class members and he has not stated facts that demonstrate that his interests are aligned with those of the class members.

This Motion is submitted simultaneously with Defendant's Motion to Strike pursuant to Rule 12 (f), Fed. R. Civ. Proc. This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the pleadings on file with the Court, and such argument as may be presented at the hearing on the Motion.

Dated: April 29, 2008

ARMSTRONG TEASDALE LLP

By: /s/ Susan D. Condon

Attorney for Defendant SHOP-VAC
CORPORATION

Email: scondon@armstrongteasdale.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically this **29th day of April, 2008** with the Clerk of the USDC Southern District of California (San Diego) to be served by operation of the Court's ECF electronic filing system upon the following:

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